REMARKS

Applicant is in receipt of the Office Action mailed January 2, 2004. Claims 1 – 20 were pending in the present application. Applicant has amended claims 1, 4, 5, 7, 9, 11, 13, 16 and 18, and cancelled claims 2 and 19. Claims 1, 3 – 18, and 20 remain pending in the application.

Claims 9 and 10 were objected to for being unclear. Applicant has amended the claims accordingly. Claims 3, 6, and 20 were objected to as being of proper dependent form. Applicant has amended the claims accordingly.

Claims 1, 3 – 4, 6 – 13, 15, 18, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Haye (USPN 6,078,932) in view of the Webopedia internet web site as of 21 June 2000 (hereinafter Webopedia). Claims 2, 5, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Haye in view of Webopedia, and in further view of Surajit Chaudhuri, "An Overview of Query Optimization in Relational Systems, 1998 (hereinafter "Chaudhuri"). Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Haye in view of Webopedia, in further view of Gregg (USPN 5,938,786). Claims 16 – 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Haye (USPN 6,078,932) in view of Webopedia, in further view of Gregg. Applicant respectfully traverses these rejections.

Claim 1 has been amended to include the feature of original claim 2. In rejecting claim 2, the Examiner acknowledged that "The combination of Webopedia does not teach a measure of quiesce strength for freeze methods as required by claims 2, 5, and 19." However, the Examiner asserts that "The cost of a plan in Chaudhuri is analogous to a weight or strength (e.g. a quiesce strength), wherein these are understood to represent the relative desirability of alternative choices," and that it would have been obvious "to assign a quiesce strength as taught by Chaudhuri to the freeze method made obvious by the combination of Haye and Webopedia for the purpose of ascertaining the desirability of alternative method choices as taught by Chaudhuri."

Applicant respectfully disagrees with the Examiner's assertion. Chaudhuri teaches that the throughput or response times for the execution of queries may be different, and that query optimization involves a space of plans or search space, a cost estimation technique so that a cost may be assigned to each plan in the search space, and an enumeration algorithm that can search through the execution space. (Section 2, "Introduction") Applicant can find absolutely no teaching or suggestion in Haye, Webopedia, or Chaudhuri of a method "wherein each freeze method includes **a measure of quiesce strength**," as recited in Applicant's claim 1. Applicant can further find no basis in any of the references to combine the teachings of Haye, Webopedia, or Chaudhuri in the manner asserted by the Examiner. Chaudhuri teaches the evaluation of search spaces for queries, while Haye teaches a variety of methods for performing point-in-time backup.

Accordingly, claim 1 along with its dependent claim 3 is believed to patentably distinguish over the cited references for at least the reason given above. In addition, claims 4, 7, 9, 11, 13, 16 and 18 recite features similar to those of claim 1, and are likewise believed to patentably distinguish over the cited references, along with their respective dependent claims, for at least the same reason.

Furthermore, Applicant respectfully disagrees with the Examiner's assertion that "it would have been obvious to one of ordinary skill in the art at the time of the invention by applicant to select a freeze method based on quiesce strength as taught by Chaudhuri, in the method made obvious by the combination of Haye and Webopedia, for the purposes of selecting an optimum method as taught by Chaudhuri." Applicant can find no teaching or suggestion in any of the cited references of the feature "**wherein selecting is a function of quiesce strength**," as recited in Applicant's claim 5. Accordingly claim 5 is believed to patentably distinguish over the cited references.

CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 50-1505/5760-17800/BNK.

Respectfully submitted,

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